In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 1540

TED FREDERICK WILLIAMS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Southern District of California, petitioner was convicted of complicity in the smuggling of marijuana into the United States from Mexico, in violation of 21 U.S.C. 176a. He was sentenced to five years' imprisonment. The court of appeals affirmed (Pet. App. A).

1. The facts are set forth at length in the petition (Pet. 5-16). Petitioner contends that on the facts the

trial judge erred in failing to require the government to disclose the identity of an informant under *Roviaro* v. *United States*, 353 U.S. 53. The considerations which support the district court's ruling are discussed in the opinion of the court of appeals (Pet. App. 2-3), on which we rely here. As the court below pointed out, the informant did not participate in the offense; nor did he at any time observe petitioner or identify petitioner as being present at the residence of a known narcotics dealer where the informant saw part of the marijuana being loaded into concealed panels of a Jaguar.[1]

Petitioner argues, however, that the informant might possibly have seen Knight, the man who drove petitioner's car across the border, at the dealer's residence and, therefore, conceivably, could have impeached the testimony of Knight, a government witness. Knight testified that he and his wife had driven to Mexico with petitioner, had then been dropped at a bar, and that petitioner had driven off and later returned to pick up the Knights. After parking the car, petitioner left the Knights again and this time came back carrying a brown shopping bag. Knight testified that the three then drove off to a deserted area outside of Tijuana where they "stashed" the marijuana (Tr. 90-95). Petitioner postulates that if the informant were able to identify Knight as being present at the dealer's house, this would tend to corroborate petitioner's testimony—that he loaned the car to Knight

[1] The government stipulated before the jury that petitioner was not observed by the informant at any time on the crucial day (Tr. 155-156).

to go shopping at Tijuana (Tr. 119-130)—and discredit Knight's testimony. Such speculation, however, is not sufficient to warrant disclosure of the informant's identity. See *Rugendorf* v. *United States*, 376 U.S. 528, 534-535.

2. The argument that compliance with 21 U.S.C. 176a would have required petitioner to incriminate himself has been considered and expressly rejected by the Ninth Circuit in *Witt* v. *United States*, 413 F. 2d 303, certiorari denied, 396 U.S. 932, and *United States* v. *Rosa Reyes-Meza De Polanco*, 422 F.2d 1304, certiorari denied May 4, 1970, No. 1879 Misc., this Term. The Fifth Circuit has also recently rejected this argument. *Walden* v. *United States*, 417 F. 2d 698. The cases cited by petitioner are not in point and clearly are inapposite in the context of the present case.

3. As the opinion below points out, petitioner's conviction did not rest solely on the testimony of an accomplice. Moreover, petitioner's argument as to the insufficiency of such testimony—that hearsay evidence of an informer or an accomplice will often not even establish "probable cause" for a search warrant—overlooks the fact that the trial evidence admitted here was not hearsay but the sworn testimony of the individual witness. See *Caminetti* v. *United States*, 242 U.S. 470, 495.

For the reasons stated, it is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JUNE 1970.

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